

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

RICK J. WILSON,

NO. 5:04-cv-02858 EJD

Petitioner,

v.

**ORDER GRANTING PETITION FOR
WRIT OF HABEAS CORPUS AND
VACATING SENTENCE; FINDING
MOOT PETITIONER'S MOTION FOR
IMMEDIATE RELEASE**

MIKE KNOWLES, Warden,

Respondent.

[Docket Item Nos. 67, 69]

Presently before the Court are two matters: (1) Petitioner Rick J. Wilson's Petition for Writ of Habeas Corpus (the "Writ"), and (2) Petitioner's Motion for Immediate Release (the "Motion"). The court granted Petitioner's request to shorten time for a hearing on the Motion and directed Respondent to file a responsive pleading by June 28, 2010. (Docket Item No. 71). Respondent did so on June 24, 2011. (Docket Item No. 72). Having reviewed the written submissions of both parties, the court finds this matter appropriate for decision without oral argument pursuant to Civil Local Rule 7-1(b). As such, the hearing scheduled for June 30, 2011, is vacated.¹ Pursuant to the Order which follows, Petitioner's unopposed Writ is granted and the Motion is denied as moot.²

¹ In the absence of a hearing, counsels' requests to appear by telephone are moot. (Docket Item Nos. 73, 74).

² This disposition is not intended for publication in the official reports.

ORDER

1
2 1. Pursuant to Wilson v. Knowles, 638 F.3d 1213 (9th Cir. 2011), on remand from
3 appeal, IT IS HEREBY ORDERED that Petitioner's Rick J. Wilson's Petition for Writ of Habeas
4 Corpus is GRANTED and the requested writ shall therefore issue.

5 IT IS FURTHER ORDERED that Petitioner's sentence is VACATED and his case is
6 REMANDED to the Superior Court of California for the County of Santa Clara for re-sentencing
7 within 45 days of this order in a manner consistent with the views stated in Wilson v. Knowles, 638
8 F.3d 1213 (9th Cir. 2011). Petitioner shall make an initial appearance on Wednesday, July 6, 2011,
9 at 1:30 p.m. in Department 24 of the Superior Court.

10 2. Having issued the Writ, the Court finds moot Petitioner's Motion for Immediate
11 Release and accordingly DENIES the relief requested therein.

12 IT IS SO ORDERED.

13
14 Dated: June 27, 2011


EDWARD J. DAVILA
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 John Paul Balazs John@Balazslaw.com
3 Peggy S. Ruffra peggy.ruffra@doj.ca.gov
4 Nancy Hsiao-Hui Tung Nancy.Tung@doj.ca.gov

4 **Dated: June 27, 2011**

Richard W. Wieking, Clerk

5
6 **By: /s/ EJD Chambers**

Elizabeth Garcia
Courtroom Deputy

United States District Court
For the Northern District of California